

HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

AND

HON'BLE SRI JUSTICE R. SUBHASH REDDY

Writ Appeal No.2534 of 2005

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Between:

Sayam Suresh ... Appellant

And

Tangda Sudhakar & others

... Respondents.

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::JUDGMENT::

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Counsel for the appellant: Sri M. Rajender Reddy

Counsel for respondent No.1: Sri V. Ravikiran Rao

Counsel for respondents 2, 3 and 4: None appeared

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December 30, 2005

Per G.S. Singhvi, CJ

This appeal is directed against order dated 23-11-2005 vide which the learned Single Judge dismissed the writ petition filed by the appellant for quashing order dated 25-1-2002 passed by Election Tribunal-cum-Junior Civil Judge, Sirpur (hereinafter described as 'the Tribunal') in O.P.No.2 of 2001.

The appellant, respondent No.1 and Sri Naitham Babu Rao contested election held on 14-8-2001 for the post of Sarpanch of Thatpally Gram Panchayat, Koutala Mandal, Adilabad District. The appellant was declared elected having secured 416 valid votes as against 409 secured by respondent No.1.

Soon after declaration of the result of election, respondent No.1 filed a petition under Section 233 of the Andhra Pradesh Panchayat Raj Act, 1994 (for short 'the Act') read with Andhra Pradesh Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995 (for short 'the Rules'). He pleaded that counting of votes had been done in violation of the statutory rules, the votes polled in his favour were wrongly counted as the votes of non-petitioner No.1 (appellant herein) and that his votes had wrongly been rejected. He also made allegations of mala fides against the Election Officer by asserting that the latter had acted under the influence of non-petitioner No.1. In his reply, non-petitioner No.1 (appellant herein) pleaded that the counting of votes had been done strictly in accordance with the relevant rules and he was declared elected on having secured highest number of valid votes.

During the pendency of the petition, both parties filed joint memo dated 27-11-2001 expressing their no objection for recounting of votes. The relevant portion of that memo reads as under:

“ The petitioner and the respondents have no objection for recounting of votes in the above petition.

Hence this joint memo.”

After considering the aforesaid memo and pleadings of the parties, the Tribunal passed order dated 6-12-2001 for scrutiny and recounting of votes. Accordingly, direction was given to the Election Officer to send the relevant records. The votes were scrutinized and recounted in the presence of the advocates of the parties on 25-1-2002. At that stage, counsel appearing for the

appellant and the learned Assistant Government Pleader conceded that vote Nos.227886, 227786 and 227887 were wrongly counted in favour of the former and the same were liable to be rejected. Similar statement was made by the counsel for the present respondent No.1 for rejection of vote No.227399 which had been earlier counted in his client's favour. Counsel appearing for the present appellant also conceded that votes bearing No.227835, 227818, 227815, 227811, 227842 and 227812 which had been earlier counted in favour of his clients were liable to be counted in favour of the election petitioner. The Tribunal also found that the major portion of the seal on vote No.227810 was in the column of election symbol of the election petitioner.

On the basis of the scrutiny undertaken by it and the statements made by counsel for the parties and the Assistant Government Pleader, the Tribunal concluded that the total number of valid votes polled in favour of the election petitioner comes to 415 as against 406 valid votes polled in favour of the non-petitioner No.1 and, therefore, the former was liable to be declared as elected. Accordingly, the Tribunal allowed the petition and declared the election petitioner (respondent No.1 herein) as elected to the post of Sarpanch.

The appellant challenged the order of the Tribunal in Writ Petition No.2402 of 2002 mainly on the ground that the reasons assigned by it for ordering recount of votes is contrary to the law laid down by the Supreme Court in **Vadivelu v. Sundaram and others** and **Mahender Pratap v. Krishan Pal and others**. Respondent No.1 controverted the appellant's plea and averred that result of the recount may not be interfered because counsel appearing for the parties before the Tribunal had agreed for recounting of votes.

The learned Single Judge took notice of the joint memo dated 27-11-2001 filed by the counsel for the parties before the Tribunal agreeing for recounting of votes, referred to the judgment of the Supreme Court in **T.A.Ahammed Kabeer v. A.A. Azeez and others** and held that once the parties had agreed for recounting of votes, the result cannot be questioned under Article 226 of the Constitution.

We have heard learned counsel for the parties and perused the record.

On 22-12-2005 the Court, after hearing counsel for the appellant

summoned the record of O.P.No.2 of 2001 decided by the Tribunal. The record received from the Tribunal has been placed before the Court. The same includes two sealed envelopes containing the ballot papers. The sealed envelopes were opened in the presence of the learned counsel for the parties and they were given opportunity to inspect the same. After inspecting the ballot papers, learned counsel for the appellant very fairly stated that scrutiny made by the Tribunal is substantially correct except in respect of one vote which had been polled in favour of the appellant, but was wrongly rejected by the Tribunal. Learned counsel for the appellant also conceded that even if one vote is counted in favour of the appellant, respondent No.1 will be deemed to have secured at least 8 votes more than his client.

In the backdrop of the above, it is to be seen whether the Tribunal committed an error by ordering recount of the votes. In this context it is necessary to reiterate that during the pendency of the petition filed by respondent No.1, counsel appearing for both the contesting parties had filed joint memo expressing their client's no objection to the recounting of votes. This must have influenced the Tribunal in passing order dated 6-12-2001 for recounting of votes. In the writ petition filed by him, the appellant neither pleaded nor any evidence was produced before this Court to show that the counsel appearing on his behalf before the Tribunal did not have the authority to file joint memo dated 27-11-2001 or that the contents of the memo were incorrect. Even in the appeal, no such plea has been taken. Therefore, it is not possible to find any legal infirmity in the direction given by the Tribunal for recounting of votes. In our view, by having given an unequivocal no objection for recounting of votes, the appellant will be deemed to have acquiesced in the process of recounting of votes and it is not open for him to turn around and question the order passed by the Tribunal for recounting of votes.

In so far as the result of recounting is concerned, learned counsel for the appellant did not put forward any tangible argument to assail the finding recorded by the Tribunal. Rather, he fairly conceded that even if one wrongly rejected vote is counted in favour of his client, respondent No.1 will be deemed to have secured at least 8 votes more than the appellant.

We appreciate the fair stand taken by the counsel for the appellant and hold

that the learned Single Judge did not commit any error by refusing to entertain his client's prayer for setting aside the order of the Tribunal, more so because the conclusion recorded by the learned Single Judge is supported by the judgment of the Supreme Court in **T.A. Ahammed Kabeer v. A.A. Azeez and others³**.

In the result, the appeal is dismissed. However, the parties are left to bear their own costs.

G.S. SINGHVI, CJ

R. SUBHASH REDDY, J

December 30, 2005

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